IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

CRL.A.No. 1438 of 2003()

CC.155/2001 of CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA

.....

APPELLANT: COMPLAINANT

HANISHKHAN, S/O.M.P.HUSSAIN,
RAYAJ HOUSE, AZHOOR MURI,
PATHANAMTHITTA VILLAGE.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS: ACCUSED

---

1. V.GIRIJA PRIYADARSHINI, PROPRIETOR,
ANAND TAXTILES, COLLEGE ROAD,
PATHANAMTHITTA, RESIDING AT SANKAR NIVAS,
PETTA, VETTIPPURAM MURI, PATHANAMTHITTA
VILLAGE.

2. STATE OF KERALA, REPRESENTED BY ITS
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.P.KESAVAN NAIR
SRI.K.G.CLEETUS
PUBLIC PROSECUTOR, SRI AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O R D E R

NO REPRESENTATION. DISMISSED.

SD/- K.R.UDAYABHANU, JUDGE

18/10/2007

\\TRUE COPY//

K.R.UDAYABHANU, J

Crl.A.No.1438 of 2003

Dated this the 30th day of October, 2007

JUDGMENT

The appellant is the complainant who had initiated proceedings under Section 138 of the Negotiable Instruments Act vide C.C.No.155/2001 in which the accused stands acquitted.

2. It is the case of the complainant that the accused issued the impugned two cheques for Rs.1,00,000/- each drawn on Indian Bank, Pathanamthitta branch in favour of the complainant towards discharge of debt. The cheques when presented for encashment got dishonoured for want of funds in the account of the accused. The statutory notice issued was received but there was no reply nor was any amount repaid.

3. The evidence adduced in the matter consisted of the testimony of PW1, the complainant, and Exts. P1 to P9.

4. PW1, the complainant, has testified that a sum of Rs.2,00,000/- was given as loan to the accused as requested by her husband in January 2001. Exts. P1 and P2 are the certified copies of the above cheques as the originals have been produced in the connected civil suit pending. He has also proved Exts. P3

to P7, the dishonour memo, lawyer notice, acknowledgment card etc. It is the case set up that the complainant managed to obtain blank cheque leaves from the shop of the accused through one employee by name Basheer who was working in the shop of the accused. PW1 has also denied the suggestion that Basheer is his relative. The trial court acquitted the accused on the ground that the account is in the name of M/s.Anand and not in the name of the accused and hence the accused, not being the account holder, cannot be found guilty.

5. As pointed out by the counsel for the appellant that the accused is described as proprietress of M/s.Anand Textiles, College Road, Pathanamthitta. It is seen from Exts. P1 and P2 cheques that the same has been signed by the accused as proprietress for M/s.Anand. I find that with regard to a proprietary concern it is the proprietor who represent the outfit as it has no legal identity as such. In the circumstances, the finding of the court below that the account is not in the name of the accused is erroneous. I find that the very fact she has signed the cheques as proprietress of the firm M/s.Anand show that she is the person operating the account. Hence, I find that the

finding of the court below cannot be sustained. There is no evidence at all to rebut the statutory presumptions. There is no specific case that the accused has not signed the cheque. I find that the evidence of PW1 and the documents produced do establish the execution of the cheque. Hence, the statutory presumptions stand unrebutted. In the circumstances, I find that the complainant has established beyond reasonable doubt that the accused is guilty of the offence under Section 138 of the Negotiable Instruments Act.

6. The accused/respondent is convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment till the rising of the court and to pay a compensation of Rs.2,00,000/- and in default, to undergo simple imprisonment for three months. The respondent/accused shall appear before the Chief Judicial Magistrate Court, Pathanamthitta on 30.11.2007 to receive sentence.

The criminal appeal is disposed of accordingly.

K.R.UDAYABHANU,
JUDGE

csl